



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 4, 2005

Mr. Ernesto Rodriguez
Assistant City Attorney
City of El Paso
2 Civic Center Plaza, 9th Floor
El Paso, Texas 79901

OR2005-02834

Dear Mr. Rodriguez:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221202.

The El Paso Police Department (the "department") received a request for a copy of two specified internal affairs case files. You state that the department is releasing some information to the requestor, but claim that portions of the submitted information are excepted from disclosure under sections 552.101, 552.108, 552.117 and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that other statutes make confidential. Section 261.201 of the Family Code provides, in relevant part:

- (a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

- (1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and
- (2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). Because the information submitted as Exhibit B consists of files, reports, records, communications, or working papers used or developed in an investigation under chapter 261, it is within the scope of section 261.201 of the Family Code. You have not indicated that the department has adopted a rule that governs the release of this type of information. We, therefore, assume that no such regulation exists. Given that assumption, we conclude that the department must withhold the information submitted as Exhibit B in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹ See Open Records Decision No. 440 at 2 (1986) (applying predecessor statute).

Section 552.101 also encompasses section 58.007 of the Family Code. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007 of the Family Code. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

¹ Because we reach this conclusion under section 552.101, we need not address your remaining arguments against the disclosure of Exhibit B.

Fam. Code § 58.007(c). We have reviewed the submitted information and agree that a small portion of Exhibit C depicts allegations of juvenile delinquent conduct or conduct indicating a need for supervision that occurred after September 1, 1997. *See id.* § 51.02(2) (providing that in title 3 of Family Code, “child” means person who is ten years of age or older and under seventeen years of age). Thus, this information, which we have marked, is subject to section 58.007. Because none of the exceptions in section 58.007 appear to apply, this information is confidential in accordance with section 58.007(c) of the Family Code and must be withheld from disclosure pursuant to section 552.101 of the Government Code. However, we find that no portion of the remaining information in Exhibit C constitutes juvenile law enforcement records. *See id.* § 58.007(c) (section 58.007 is only applicable to records pertaining to juvenile suspects or offenders, not juvenile victims or witnesses). Therefore, we determine that the department may not withhold any portion of the remaining submitted information pursuant to section 552.101 in conjunction with section 58.007 of the Family Code.

You also claim that the information submitted as Exhibit C is excepted under section 552.108 of the Government Code. Section 552.108(a)(2) excepts from disclosure information concerning an investigation that concluded in a result other than conviction or deferred adjudication. A governmental body claiming section 552.108(a)(2) must demonstrate that the requested information relates to a criminal investigation that has concluded in a final result other than a conviction or deferred adjudication. However, section 552.108 is generally not applicable to the records of an internal affairs investigation that is purely administrative in nature. *See City of Fort Worth v. Cornyn*, 86 S.W.3d 320 (Tex. App.—Austin 2002, no pet.), *Morales v. Ellen*, 840 S.W.2d 519, 525-26 (Tex. Civ. App.—El Paso 1992, writ denied) (statutory predecessor not applicable to internal investigation that did not result in criminal investigation or prosecution). You do not inform us, and the submitted information does not otherwise indicate, that the internal investigation documented in Exhibit C resulted in any criminal investigations or charges. We therefore conclude that the department has not demonstrated that Exhibit C is excepted from disclosure under section 552.108, and no portion of Exhibit C may be withheld on that basis.

We note that some of the information in Exhibit C may be excepted from disclosure pursuant to section 552.101 in conjunction with common law privacy. Common law privacy protects information if (1) the information contains highly intimate or embarrassing facts the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). This office has found that an individual’s criminal history, when compiled by a governmental body, is excepted from required public disclosure under common law privacy. *See* Open Records Decision No. 565 (citing *United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)). Accordingly, the department must withhold the information we have marked in Exhibit C under section 552.101 in conjunction with common law privacy.

Section 552.117(a)(2) excepts from disclosure the present and former home addresses and telephone numbers, social security number, and family member information of a peace officer, regardless of whether the officer requests confidentiality for that information under sections 552.024 or 552.1175 of the Government Code.² Accordingly, the department must withhold the information that we have marked in Exhibit C under section 552.117(a)(2).

You also claim that portions of Exhibit C are subject to section 552.130, which excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, we conclude that the department must withhold the Texas motor vehicle information that we have marked in Exhibit C pursuant to section 552.130 of the Government Code.

In summary, the department must withhold Exhibit B in its entirety as confidential pursuant to section 552.101 in conjunction with section 261.201 of the Family Code. The department must withhold the information we have marked in Exhibit C pursuant to section 552.101 in conjunction with 1) section 58.007 of the Family Code and 2) common law privacy. The department must withhold the information we have marked in Exhibit C under sections 552.117 and 552.130. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the

²"Peace officer" is defined by article 2.12 of the Code of Criminal Procedure.

Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Caroline E. Cho
Assistant Attorney General
Open Records Division

CEC/sdk

Ref: ID# 221202

Enc: Submitted documents

c: Ms. Corda C. Shonerd
EPACLU
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(w/o enclosures)